IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION NO.3010 OF 2003

The Veerashaiva Co-operative Bank Ltd. ...Petitioner.
Vs.
M/s. Compack & Ors. ...Respondents.
....
Mr. Piyush Shah for the Petitioner.
Ms.Neeta Solanki for Respondent No.3.
Mr. R.D. Bhat for Respondent Nos.4, 5 and 6.
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CORAM : DR.D.Y.CHANDRACHUD, J.

September 14, 2006.

P.C.

The Petitioner is an Urban Co-operative Bank, registered under the provisions of the Maharashtra Co-operative Societies' Act, 1960. The First Respondent is a proprietory firm owned by the Second Respondent and the Third Respondent was at the material time, a Manager of the firm. By an agreement dated 10th September 1996, the Petitioner agreed to given credit facilities to the First Respondent upto a limit of Rs.3 lakhs. In consideration thereof, several documents by way of security came to be executed for and on behalf of the borrower. According to the Bank, the First

Respondent executed a Deed of Hypothecation of its machineries and movable properties on 10th March 1997. The Bank granted overdraft facilities to the First Respondent and, on the date of the institution of the petition, an amount of Rs.3,45,856/- was stated to be due and payable by the First Respondent to the Petitioner. The Second Respondent who was the owner of the First Respondent is stated to have absconded. On 11th January 1998, some of the workmen are stated to have executed a letter in favour of the Bank recording that the office equipments and machinery in the factory of the First Respondent were handed over to a security agency.

2. A dispute arose between the First Respondent and Respondent Nos.4 to 6 who are employees engaged in the factory. A complaint of unfair labour practices was instituted by Respondent Nos.4 to 6 before the Industrial Court at Mumbai. The Petitioner was impleaded as the Fifth Respondent to the complaint. The complaint was instituted on the foundation that the Complainants were permanent employees who had rendered

several years' of continuous service. The complainants alleged that after April 1997, no wages were paid and production was stopped. The Second Respondent was alleged to have left India and the affairs of the employer were managed by the Third Respondent who was the Manager for a certain period of time. According to the Complainant-workmen, more than a hundred employees were engaged in the establishment and the closure of the establishment was in violation of the provisions of Section 25-O of the Industrial Disputes Act, 1947. Two Banks were impleaded as the Fourth and Fifth Respondents to the complaint. The Fourth Respondent was the Laxmi Vilas Bank Limited, while the Fifth Respondent to the complaint is the Petitioner herein.

3. In so far as the Petitioner is concerned, it has been stated in the body of the Writ Petition that the complaint was served on the branch office of the Petitioner at Chembur. The complaint, however, remained to be attended. On 10th March 1999, an interim order was passed by the Industrial Court, directing the employer to pay the wages of the workmen from May 1997. The Petitioner was directed that in the event that the Bank secured any order from the competent Court for disposing of the machinery

from the factory premises, the Bank should first pay the dues of the workmen before adjusting the dues of the First Respondent. Laxmi Vilas Bank Ltd. appeared before the Industrial Court and claimed that the aforesaid Bank had extended credit facilities to an entity by the name of Hindustan Trading Company in respect whereof a mortgage had been created of the factory premises.

4. The Industrial Court disposed of the complaint by an order dated 22nd January 2003. The Court issued a declaration that Respondent Nos.1 to 3 to the complaint had committed an unfair labour practice within the meaning of Item 9 of Schedule IV and a direction was issued to the aforesaid Respondents to pay the monthly wages of the employees mentioned in Annexure-A to the Complaint for the period between May and August 1997. The Petitioner herein was injuncted by an order of the Industrial Court in the following terms:

> "iv) The Respondent No.5 is restrained from disposing of the fixtures, machineries, raw materials lying in the office and factory premises of Respondent No.1 without paying the arrears of wages of these employees as ordered earlier.
> -v) In case Respondent No.5 Bank is required to dispose of the hypothecated machinery etc. of Respondent No.1 by auction, the same shall be made, and the auctioned money shall be adjusted towards the dues of the

workmen by priority."

The order of the Industrial Court has been called into question in these proceedings under Article 226 of the Constitution. According to the Petitioner, it obtained knowledge of the order of the Industrial Court when it received a notice of the Recovery Officer dated 10th September 2003 when an application was filed by Laxmi Vilas Bank Ltd. against Hindustan Trading Company.

5. The submission that has been urged on behalf of the Petitioner is that there is no relationship of employer and employee between the Petitioner and any of the complainant-workmen who had moved the Industrial Court; that there was no allegation of unfair labour practice against the Petitioner and that consequently a complaint of unfair labour practice was not maintainable as against the Petitioner. On the other hand, on behalf of the complainant-workmen, it has been submitted before the Court that the wages of the workmen were not paid after April 1997 by the Second Respondent who is absconding and that the only manner in which the payment of wages could be secured was to implead the Bank and seek a direction against the Bank restraining it from exercising its contractual rights in respect of the

hypothecated machinery.

6. The Petition was admitted by an order dated 23rd February 2004. At the stage of admission, by an interim order passed by a Learned Single Judge, the Bank was allowed to dispose of the machinery in question and to deposit the proceeds thereof in this Court. The Court directed that the proceeds shall be invested in any Nationalised Bank until the disposal of the petition. Accordingly, the Court has been informed that the order of the Court has been complied with and the proceeds have been deposited before the Court.

7. Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, provides that where any person has engaged in or is engaging in any unfair labour practice, then any union or any employee or any employer or any Investigating Officer may within ninety days of the occurrence of such unfair labour practice, file a complaint before the Court competent to deal with such complaint either under Section 5, or as the case may be, under Section 7 of the Act. Section 29 provides that an order of the Court shall be binding on

all parties to the complaint, all parties who were summoned to appear as parties to the complaint, the employer and his successors or assigns and the employees who are employed in the undertaking on the date of the complaint and those who may be subsequently employed. Under Section 30, the Industrial Court or as the case may be, the Labour Court is empowered to issue a declaration, upon holding that any person named in the complaint has engaged in, or is engaging in, any unfair labour practice. The Court is empowered to issue a cease and desist order and to take affirmative action. Under Section 32, the Court has the power to decide all connected matters arising out of any application or complaint referred to it for decision under any of the provisions of the Act.

8. Now, it is a settled principle of law that the jurisdiction of the Court in a complaint of unfair labour practice under the Act is conditioned on the existence of the relationship of employer and employee. Unless the relationship of employer and employee is undisputed or is indisputable, the Court would, at the threshold, lack the jurisdiction to entertain the complaint. (**Cipla Ltd.vs. Maharashtra General Kamgar Union**, (2001) 3 SCC 101). In the

present case, *ex-facie* there was no allegation of any unfair labour practice against the Bank which was impleaded as a party to the complaint. The Bank is not the employer of the Complainant-workmen. In the absence of the relationship of employer and employee between the Bank and the Complainant-workmen, the Industrial Court lacked the jurisdiction to entertain the complaint and to issue directions against the Bank. The Industrial Court held in para 9 of its judgment that the basic underlying concept is that a complaint under Section 28 can be filed only as between employees and employers. The Industrial Court held that the term 'employer' would include an agent of an employer or a person who had a direct connection with the employment of the workers; conversely a person who had no connection with the relationship of employment and who was not connected with the employment of the workmen could not be considered as a necessary or proper party. Despite holding thus, the Industrial Court proceeded to issue final directions against the Petitioner. Laxmi Vilas Bank Ltd. had entered appearance and in its submission had urged before the Industrial Court that the mortgage in respect of the factory premises had been created in its favour by a sister concern by the name of Hindustan Trading Company. The Industrial Court

correctly, in my view, observed thus, in para 21 of its judgment:

> "So far as Respondent Nos.4 and 5 are concerned, admittedly, they are not the employers nor they have any responsibility for carrying out the terms of contract of employment entered into by Respondent No.1 with these employees. Therefore, declaration pertaining to committing of unfair labour practice cannot be given against Respondent Nos.4 and 5."

The Industrial Court came to the conclusion that a declaration of unfair labour practice could not be given against any of the two Banks since there was no relationship of employer and employee between the Complainant-workmen and the two Banks. Indeed the recital of the factual foundation of the complaint in the order of the Industrial Court would demonstrate that there was not even an allegation of unfair labour practice against the two Banks. Hence, the Industrial Court had no jurisdiction to entertain the complaint against the Petitioner and to issue injunctive orders restraining the Petitioner from disposing of the hypothecated movables. Similarly, the direction that the proceeds of the hypothecated machinery shall, in the event of an auction, be adjusted towards the dues of the workmen could not have been issued. The Industrial Court in a complaint under Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971,

had no jurisdiction either to adjudicate upon the validity of the claim of the Bank or to issue any direction which had the effect of overriding the contractual rights which the Bank sought to assert in respect of its borrower. In the circumstances, clauses (iv) and (v) of the directions contained in the order of the Industrial Court are unsustainable and will have to be quashed and set aside. There shall be an order in these terms.

9. While disposing of the petition, the Court will have to make some provision in this judgment in regard to the moneys which have been deposited in the Court following the permission that was granted to the Petitioner to dispose of the machinery by the interim order. Counsel appearing on behalf of the Complainant-Workmen has submitted that the claim of the Bank against the original borrower is barred by limitation. It lies outside the province and jurisdiction of the Industrial Court in a complaint under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, and consequently, in the present proceedings to make any adjudication upon the tenability of the claim which the Bank has against the borrower. At the same time, allowing the Bank to unconditionally withdraw the

proceeds that have been deposited in this Court upon the sale of machinery would amount to a decree being passed by this Court without any adjudication into the merits of the claim of the Bank. The machinery has been sold under orders of the Court and hence while disposing of the Petition some directions will have to be issued in regard to the sale proceeds which are lying in deposit with the the Prothonotary & Senior Master of the Court. The Bank would ordinarily have had to file a claim before the competent forum for an adjudication of its rights qua the borrower and guarantors. In order to resolve the issue, Counsel appearing on behalf of the Petitioner has stated before the Court on instructions that within a period of eight weeks from today, the Petitioner shall either take recourse to the remedy of filing a dispute under Section 91 or an application for recovery under Section 101 of the Maharashtra Co-operative Societies' Act, 1960. The amount which has been deposited in the Court shall abide by such further directions that would be issued by the competent forum before which an application for recovery is filed by the Bank. The ends of justice would be served if the amount which has been deposited continues to remain invested in a fixed deposit of a Nationalised Bank in pursuance of the interim order already passed in these

proceedings subject to further orders that may be passed by the competent forum. In the event that the Petitioner fails to move the competent forum within a period of eight weeks for the realisation of its dues, there is no reason why the money should not be released to the workmen in execution of the order of the Industrial Court.

10. In the circumstances, this petition shall stand disposed of in terms of the following directions :

-(1) Clauses (iv) and (v) of the operative directions contained in the order of the Industrial Court dated 22nd January 2003 are quashed and set aside and the Complaint, being Complaint (ULP) 671 of 1998, shall stand dismissed as against the Petitioner herein;

-(2) The Petitioner shall be at liberty within a period of eight weeks from today, in pursuance of the statement of its Counsel made before this Court on instructions from an Officer of the Bank who is present before the Court, to file a dispute or application, as the case may be under Section 91 or Section 101 of the Maharashtra Co-operative Societies' Act, 1960. Upon such a

dispute or application being filed, the Petitioner shall intimate the Prothonotary and Senior Master, of the filing thereof. The intimation shall also be furnished by the Petitioner to the Counsel appearing on behalf of the Complainant-workmen (Respondent Nos.4, 5 and 6 to these proceedings);

-(3) Upon an intimation being furnished of the filing of the proceedings before the appropriate form by the Bank for the recovery of its dues, the amount which is lying in deposit shall abide by such further orders as may be passed by the competent forum. In the event that no intimation is furnished to the Prothonotary and Senior Master by the Petitioner of the filing of the application before the competent forum within a period of eight weeks from today, the Prothonotary and Senior Master shall transfer the amounts that are in deposit to the Registrar of the Industrial Court for being disposed of in execution of the judgment and order of the Industrial Court dated 22nd January 2003;

-(4) The aforesaid directions shall not preclude the Complainant-workmen from taking recourse to the remedy under Section 50 of the Maharashtra Recognition of Trade Unions and

Prevention of Unfair Labour Practices Act, 1971, for the execution of the order of the Industrial Court dated 22nd January 2003;

-(5) Counsel appearing on behalf of the Petitioner has stated on instructions that in pursuance of the interim order dated 23rd February 2004, only the machinery that was hypothecated as reflected in the letter dated 10th March 1997 (Exh.D) was sold and a total amount of Rs.4,05,000/- was realised from the sale. Counsel appearing on behalf of the Petitioner agrees to furnish inspection to the Counsel appearing on behalf of the Complainant-workmen of the list of items that were sold within a period of one week.

11. The petition is accordingly allowed to the aforesaid extent. There shall be no order as to costs.

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